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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 371st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 29 April 1999, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.371/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Mauritius (continued) (CAT/C/43/Add.1)

1. At the invitation of the Chairman, the members of the delegation of Mauritius resumed their places at the Committee table.

2. Mr. DABEE (Mauritius), in reply to the questions raised by the Committee, said that Mauritius shared the problems experienced by other small countries in meeting its reporting obligations; the Committee's suggestions would be taken into account for the preparation of future reports.

3. In regard to the questions raised by Mr. Mavrommatis, the fact that two of the six members of the National Human Rights Commission were non-lawyers was intended to counter the risk of the Commission's exercising its functions in too legalistic a manner. It was unlikely that the Executive would fail to implement the Commission's recommendations, for the pressure of public opinion, including that of NGOs and members of the National Assembly, would make it difficult to ignore recommendations for the granting of relief to victims of human rights violations, particularly as the Commission's annual report, which was to be submitted to the Assembly, would be the subject of public debate.

4. In regard to expulsion and return provisions (article 3 of the Convention), a deportation order by the Executive was made in the light of the findings and conclusions of a magistrate, and was subject to judicial review by the Supreme Court. Courts would not authorize expulsion or deportation unless guarantees, such as protection from torture, were forthcoming.

5. The two police officers who had been prosecuted in connection with the Labrosse case, in which the victim had died, had been acquitted by the intermediate court after a lengthy trial.

6. Mauritius intended to incorporate the provisions of the Convention into domestic law, although effectively protection against torture was already provided by section 77 of the Criminal Code which criminalized any breach of the Constitution, including a breach of the right to protection from torture. It remained only, therefore, to amend section 77 so that an order from a superior officer could no longer be invoked as a defence against prosecution for torture.

7. Paragraph 38 of the report, which had caused some confusion, should be construed to mean that extraterritorial jurisdiction currently extended to the few cases mentioned in the paragraph; Mauritius intended to legislate in respect of universality of jurisdiction over offences of torture, genocide and other universal crimes.

8. The Coowar case demonstrated that under section 5 (3) (b) of the Constitution, together with the relevant provisions of the Judges' Rules, a person who had been arrested and was being detained had a constitutional right

not only to have access to a lawyer but also to be informed of that right. A statement taken from an arrested person who had not first been informed of his right to counsel would not be admissible. In practice, the person would be informed of his right to counsel upon arrest, and at any time thereafter counsel might visit his client, who in turn might refuse to give his statement unless his counsel was present.

9. In clarification of paragraph 19 of the report, the provisions of section 13 of the District and Intermediate Court Act had been superseded under the new Constitution, which permitted detention without an order from a magistrate only when no magistrate was available, for instance during the weekend. Even then, the Bail Act empowered the police to release a detainee on parole. Although it was theoretically conceivable that an accused could be remanded indefinitely, initially for a maximum of 21 days to a police cell and subsequently for periods of 14 days to jail, section 10 (2) of the Bail Act vested in the magistrate the power to release a detainee on bail or subject to conditions whenever he was not satisfied that continued detention was justified. On occasion magistrates had, proprio motu, released detainees where they considered that police procedures had been excessively slow. The report of the Presidential Commission on Reform of the Judiciary had recommended time limits of three to six months from the date on which the offence was reported to that on which a criminal charge was lodged against the accused; when that recommendation was implemented, the duration of pre-trial detention would be curtailed.

10. It had not been possible to ascertain whether text books and material prepared by the United Nations Centre for Human Rights were used in the training of police and prison officers.

11. Supplementing the provisions of the Judges' Rules as a deterrent from obtaining a confession by duress, torture or other forms of pressure, the recently enacted Administration of Justice (Miscellaneous Provisions) Act provided for the admissibility of sound recording of confessions; for certain offences confessions would not be admissible unless recorded. However, there was no systematic and ongoing mechanism for the review of interrogation rules.

12. In reply to further questions put by Mr. El Masry, it was expected that the supervisory role of the National Human Rights Commission would have a significant deterrent effect on any attempts by the police to frustrate investigations into police misconduct towards citizens. Despite the wording of the law in regard to judicial inquiries, the procedure invariably followed in the event of a death in prison or in police custody was for the Director of Public Prosecutions (DPP) to instruct the magistrate to hold a judicial inquiry into the causes and circumstances of the death, as exemplified by the prompt action taken following the death of the singer Kaya in such circumstances. Although the statistics his delegation had cited recorded no convictions of or disciplinary action against police officers, the inquiries were believed to have been impartial since they had always been conducted in court by law officers of the DPP's Office and there was no evidence that any such case had been badly or incompetently conducted or unfairly tried or judged. In the future, the supervisory role to be exercised by the National Human Rights Commission would provide a further guarantee.

13. The delegation were not in a position to provide details regarding the manner in which the voice message system operated in practice, but the police had stated that they did indeed pursue investigations of complaints recorded on the system.

14. With regard to article 16 of the Convention, the measures to prevent torture described in the report under articles 10, 11 and 12 were also applicable to acts of cruel, inhuman or degrading treatment or punishment.

15. He agreed that the principle of double criminality should not operate in such a way as to provide asylum for torturers in Mauritius. The remedy consisted in making torture a specific criminal offence and ensuring that all provisions of the Convention governing extradition were covered.

16. Concern had recently been expressed in the National Assembly regarding the fact that the forensic services and police medical personnel operated under the aegis of the police. The Presidential Commission on Judicial Reforms had addressed the matter and recommended that a Government-sponsored corporate entity should be set up for the purpose and should charge the police or other customers for its services. Suspects had recently demanded counter-autopsy reports because of their lack of faith in police reports. Such procedures were sometimes very costly, for example when foreign forensic doctors were hired at commercial rates. The authorities were therefore studying the requisite changes in legislation and the financial implications of a reform of the existing system.

17. The authorities had not yet established a rehabilitation or compensation fund for victims of torture or their next of kin. The Human Rights Commission intended to recommend such a step and the Government would doubtless take action in the context of its phased implementation of its obligations under the Convention as soon as the requisite resources were available.

18. A torture victim could sue either the wrongdoer or the State by virtue of its vicarious responsibility as an employer. In practice, most victims preferred to sue the State as the party most likely to be solvent. In some deserving cases involving, for example, police brutality, the State had made out-of-court settlements of claims.

19. There were no separate psychological support services for torture victims but psychologists employed by the public health services dealt with victims of public or private wrongdoing. Medical care was provided free of charge and was available on a non-discriminatory basis throughout the country.

20. It was a legitimate perception that the Office of the Director of Public Prosecutions might on occasion take the part of police officers in cases of alleged wrongdoing. However, the fact that the Commissioner of Police himself had recently been suspended from duty for suspected malpractice testified to the willingness of the authorities to take action in clear prima facie cases of police wrongdoing. An inspector of police had been arrested the previous week on charges of forgery and was currently in police custody.

21. The Ombudsman enjoyed security of tenure in the same way as judges and could be removed only by the President on the recommendation of a constitutional tribunal.

22. The principle applicable to derivative evidence was that courts weighed the prejudicial value of such evidence against its probative value. It was for the judge to decide whether it should be excluded or admitted. Where the prosecution had no evidence apart from that obtained through an inadmissible statement, the court would probably exclude the evidence on the grounds that its prejudicial value outweighed its probative value.

23. The delegation had been unable to obtain up-to-date statistics on private prosecutions. Of the few prosecutions instituted each year, some were genuine cases and others were instituted simply out of spite because the prosecuting parties were themselves being sued. In a few cases, the Director of Public Prosecutions had discontinued private prosecutions and ordered a police inquiry to establish whether there was a minimum basis for preferring charges. He hoped to provide detailed statistics in the next periodic report.

24. Mr. MAVROMMATIS (Country Rapporteur) thanked the delegation for its comprehensive replies to the Committee's questions and for making them available in typewritten form, which greatly facilitated the Committee's task.

25. If a person residing lawfully or unlawfully in Mauritius alleged that he would run the risk of being tortured if returned to a particular State, the authorities were obliged under the Convention to conduct an inquiry into the correctness of the allegations. The person concerned should not be returned to a country where such a risk existed or expelled to another country from which he might be returned to a country where he was in danger of being tortured.

26. Provision must be made for an inquiry into every death in custody.

27. Mr. EL MASRY (Alternate Country Rapporteur) thanked the delegation for its lucid and efficient response to the Committee's questions. He was aware of the difficulties that developing countries faced in honouring their reporting obligations and thanked Mauritius for fulfilling them so ably.

28. The CHAIRMAN invited the delegation to return later in the session to hear the Committee's conclusions and recommendations.

29. The delegation of Mauritius withdrew.

The public part of the meeting rose at 4 p.m.